

**ARIZONA STATE PARKS BOARD
SPECIAL MEETING
1300 W. WASHINGTON STREET
PHOENIX, AZ
AUGUST 22, 2008
MINUTES**

Board Members Present

William Scalzo, Chairman
Reese Woodling
Arlan Colton
Tracey Westerhausen
Larry Landry (arrived at 10:07 a.m.)
Mark Winkleman

Board Members Absent

William Cordasco

Staff Present

Jay Ream, Assistant Director, Parks
Debi Busser, Executive Secretary

Assistant Attorney General

Theresa Craig
Joy Hernbrode

A. CALL TO ORDER - ROLL CALL – 10:00 A.M.

Chairman Scalzo called the meeting to order at 10:04 a.m.

B. INTRODUCTIONS OF BOARD MEMBERS AND AGENCY STAFF

Board members and Agency staff introduced themselves. Ms. Westerhausen then read the Board Statement.

1. **Board Statement** - "As Board members we are gathered to be the stewards and the voice of Arizona State Parks' Mission Statement: Managing and Conserving Arizona's Natural, Cultural, and Recreational Resources, Both In Our Parks and Through Our Partners for the Benefit of the People."

C. DISCUSSION ITEMS

1. **Discussion and Possible Action Regarding Recruitment of an Executive Director**

Chairman Scalzo stated that this item was placed on the Agenda because the Board has been advised of Executive Director Ken Travous' intention to retire. The Board has some time to come up with an adequate process to fill this future vacancy. He has talked a little bit with the Attorney General's (AG) Office and they have been kind enough to put us in touch with individuals from the Department of Administration who are professionals with this. He asked Ms. Susan Laurence and Mr. Tom Kernen to

talk to the Board about the process the Board needs to follow. Afterwards, the Board can take appropriate steps.

Ms. Susan Laurence, Recruitment Manager for the Department of Administration (DOA), Human Resources, addressed the Board. She stated that she was present to give the Board an overview of the executive recruitment process. She stated that there are quite a few steps involved in the process. It can be a very enjoyable process. It is her hopes that when the Board begins the process, they can select the right person. She distributed a document to the Board that detailed the process.

Ms. Laurence stated that the process begins with determining the requirements of the job, also known as the PDQ. She has taken the liberty of taking the PDQ from a past document. It is a very dated document and does not look like it has been updated for several years. Her advice would be for the Board to review it, look at what the Board expects the incumbent will be involved with, and make the appropriate changes. Once those changes are made, the PDQ should be returned to her and she will then forward it to Class and Compensation for their acceptance or changes they want to see. She will then get back to the Board with the newly revised PDQ. The job description can then be developed for this position. The job description can then be put out on their website and whatever other postings the Board may want. There are some job boards she believes are better than others – Monster.com and Jobbing.com. DOA will pay for each executive recruitment posting and advertisement. They will also put the ads out to the colleges if the Board wishes. Another good thing with Jobbing.com and Monster.com is that they reach out to 50-100 diversity and affinity sites. It reaches a huge audience, which is also a plus.

Ms. Laurence noted that there is a cut-off date. They then review the résumés they have received and look at developing a job matrix of the top candidates who meet the qualifications. They will send those top candidates' résumés and the job matrix to the Board-designated contact person.

Ms. Laurence stated that the next step would be for the Board's Selection Committee (or the entire Board, if that's what the Board wants) to review that information and select not more than 8-10 qualified candidates for consideration. Her group, in turn, can conduct telephone pre-interviews to determine whether or not they are still interested in the position, salary expectations, if any of them are out-of-state (the state does not pay for relocation for them). They can do a reference check on the candidates that are still interested. They need to collect a minimum of three professional references. They will then give their findings back to the Search Committee, break their findings and reviews out, and then they will do an interview with the Search Committee. Once the Search Committee has narrowed it down to one or two final candidates, there would be a final interview with the full Board to make the selection.

Ms. Laurence added that if there are very specific publications or websites that the Board feel are relative to this position to please let her know. They can post in those places as well. She distributed her business cards to the Board and invited them to call her if they have any questions. She added that it's an easy process that flows along fairly well.

Ms. Laurence noted that she needs a contact person for the Board.

Mr. Colton asked if the people who conduct the pre-interviews have ever run into a situation where the candidates have an issue with their references being contacted so early in the process.

Mr. Landry added that there is a very possible chance that someone from out-of-state may be director of another park system and won't want it to be made public that they're interviewing for another job. If DOA starts calling and checking references, it could put that person in jeopardy with their current job.

Ms. Laurence responded that that could very well be, but if they are interested and made the decision to put their names in the hat for a better position, knowing that they may not get it, it is a decision they need to make.

Mr. Landry noted that, having just gone through a similar process with the AZ Tourism and Sports Authority Board, there are a number of predictions he can make. He did not know he had so many politician friends and other friends who would call for friends until it was known that the Sports Authority Board was recruiting for a new Executive Director. The other board members had similar experiences. Whether in-state or out-of-state, people would call saying it was suggested they apply. That board decided, and it was the smartest decision they made, to hire an executive search firm. It took them out of the lobbying process that, unless the Board does something, will occur. He believes that the Board should discuss that. Something else that he feels would be very appropriate would be for the Chairman to form a subcommittee consisting of himself and no more than two Board members to act as a Search Committee. He was not on the Sports Authority Board's subcommittee, but they interviewed every board member on what they wanted in an Executive Director. The board came to a consensus job description.

Mr. Landry added that, in this case, he certainly wants to get Mr. Travous' experience and thoughts. He's been with the agency more than 20 years and Mr. Landry would say that there is nothing more important for this Board this year than to find a new Parks Director. He stated he would further suggest, if they can get through all the State's red tape, that the Chairman or someone on the Search Committee may even want to go to the appropriate national meetings because if someone is serious about the job, they're going to want to talk directly to a Board member. We are very unique from other state agencies in the fact that the Parks Board has the authority to hire and fire as opposed to going through the Governor or recommending to the Governor. He believes these are the kinds of things the Board may want to discuss. Within the confines of being a public agency and the Open Meeting Law requirements, the Board needs to be as careful as it can to not scare away potential candidates who already have jobs. It's a very sensitive issue. In the case of the Sports Authority Board, they sent every board member a list of the top five candidates; there was a unanimous consensus to interview two (one of whom gave permission to check references prior to the board interview); a public meeting was called where the issue was discussed. They came to a unanimous decision, but all with legal advice on the Open Meeting Law throughout. They were able to keep confidentiality. They were able to do reference checks on one of

the candidates who made the finals without too much feedback and they were also able to talk to one or two others who were knowledgeable. Both of the two finalists could have done the job. He is prepared, after discussion of this issue, to make a motion.

Chairman Scalzo noted that the question would be whether the DOA can help the Board get an executive search company to assist in this process.

Ms. Laurence responded that she understands the Board's thoughts. The search process done by her department and any search company is done pretty much the same way. They do not discuss reference checks with anyone. The exposure the Board has, whether they use a third party for the search, is the same. The records will still be made public at some time.

Ms. Laurence pointed out that executive search companies are extremely expensive and, in many cases, handle postings the same as DOA would do. She feels it's only fair that she bring this up. They are very, very expensive.

Mr. Landry stated to counsel, regarding the Open Meeting Law and this other public agency, that they were not required to disclose who applied for the position; they were not required by the process they put into place (because it is personnel and falls under Executive Session) to disclose names. However, no decisions could be made except in the public meeting. He wants to get to the details of the confidentiality (or not). He agrees with DOA on the issue that the Board's own staff know what professional journals are appropriate for the postings. Coming up with the correct job description and that process of having someone headhunt for the Board is a different question. He is very concerned about this confidentiality issue under the Arizona statutes, Executive Session, and the Board's duty of loyalty. He wants to hear counsel's opinion on that to compare with the legal decision the Sports Authority received. The legal advice on this issue should be done in Executive Session.

Mr. Tom Kernan, Sr. Recruiter, DOA, addressed the Board. He noted that just in the past year they have helped several boards and commissions bring on some very visible executive directors (i.e., the State Board of Medical Examiners and the Board of Accountancy). These positions went through the same process Ms. Laurence discussed. There was no compromise of confidentiality. An east coast state director applied for the Board of Accountancy position. He was not selected, but that person still came to interviews. It was not an issue for him. He's been in the search industry for 25 years and owned his own search firm 12 years prior to joining the state. The issue of confidentiality could be a concern; generally, most of the candidates have peers that they work with that they can confide in as to what their plans are. If there's a sincere concern, then it's up to the Board to decide if they are willing to proceed with the individual through the interview process until the final decision is made before the final references are checked. In his experience with the state, they have never had anyone withhold references because of confidentiality.

Mr. Landry stated he would like to make a motion that the Board postpone further discussion of this item until after Executive Session. He would like to get some legal advice as allowed under the statutes before discussing this issue further and come to any motions.

Chairman Scalzo questioned whether a motion was necessary and noted that the Board will be going into Executive Session on this issue shortly.

Board Action

Mr. Landry: I move that the Board change the Agenda and go into Executive Session and immediately go to Agenda Item D on the Agenda as posted and outlined and as discussed under the AZ Revised Section.

Chairman Scalzo asked if Mr. Landry was referring to Agenda Item D.1.a.

Ms. Hernbrode noted that the County Attorney and the private attorney for the County were present to speak to the issue of the Spur Cross litigation. She asked the Board to continue with the Agenda and take up item C.2.

Mr. Landry withdrew his motion and deferred to counsel.

2. Discussion and Possible Action Regarding the Suit Filed Against the State of Arizona, Arizona State Parks by Keith Vertes and Scott Mead regarding the Spur Cross Ranch Conservation Area.

Ms. Hernbrode began a presentation on the background of Spur Cross Ranch utilizing a GIS map. She distributed a hard copy of the map to the Board. She pointed out the Spur Cross Ranch on the map and reported that Arizona State Parks (ASP) has been sued by two individuals, Mr. Vertes and Mr. Mead who own land close to the Spur Cross Conservation area. Spur Cross is just outside the town of Cave Creek and the Board owns a Conservation Easement over the entire parcel. The underlying property is owned by Maricopa County and Cave Creek, respectively, and is maintained as a County park. The County runs it and the Board holds the Conservation Easement over the entire parcel. The County, the Board, and Cave Creek acquired the property in January 2001. The purchase was subject to some right-of-ways, including the one at issue, which is referred to as the Dreisezun easement. She pointed out the Vertes and Mead property in relationship to the Board's boundary. She pointed out the Dreisezun easement, which is intended to serve the area known as 20218024

Mr. Colton asked where Spur Cross Road and other landmarks are located in relationship to Spur Cross.

Ms. Hernbrode then pointed out Spur Cross Road and showed where it stops (at the parking lot into the park). She pointed out areas owned by other private owners who are not parties to this lawsuit.

Ms. Hernbrode reported that the Board's Conservation Easement allows the County and the city to make very limited improvements on this property. She stated that she will go into a lot more detail in Executive Session.

Ms. Hernbrode reported that Vertes and Mead acquired their properties on the same date in 2006. Their Title Insurance specifically notes that there is no legal access to their property. After they purchased their properties, they purchased an Assignment of the Dreisezun easement and an easement across 20218024 to access their parcels.

Ms. Hernbrode stated that in early 2007 Vertes and Mead started communicating with Maricopa County about using that easement. Maricopa County denied Vertes and Mead the use of the easement. They appear to acknowledge in their pleadings that the easement may not do what they need it to do, so they have sued the Board for a private land way of necessity, which is essentially condemning the Board's land in order to get access to their land.

Chairman Scalzo noted that he was the Maricopa County Parks Director when Spur Cross was acquired. He was the Parks Director when this group initiated discussions with the County. He was involved with the County in refusing access.

Ms. Hernbrode introduced Mr. Charles I. Kelhoffer, the outside counsel for the County in this lawsuit.

Mr. Kelhoffer addressed the Board. He stated that this is a private way of necessity action, which is provided for in our State Constitution and under Arizona Statute 12-12.01. As background, he explained that when our state was founded it was deemed important that property not be landlocked and that the resources of the state be available for use. It provided for a cause of action if someone's property is landlocked to obtain a route over another individual's property. They have to pay for that route.

Mr. Kelhoffer noted that Ms. Hernbrode has provided a lot of the background he was going to provide. The easement was originally dedicated in 1995 (before it became part of the park system) from Great American Insurance Co. to Mr. Dreisezun. The easement itself is very limited and provides that it is only to be used to provide ingress and egress and utility service to and from his property. It further provides that it shall not be deemed a constituted dedication for public use or create any rights to the general public. It further provides that Mr. Dreisezun or his successors are not to make or cause any improvements or alterations to the easement area without the permission of the owner of the tract that goes across.

Mr. Kelhoffer stated that Vertes and Mead were aware of the above. They paid about \$1.3 million for these two parcels, each of which is about 13 acres, in May of 2006. Prior to that, they had survey crews who surveyed what the easement is. There is a road that is very closely aligned to the easement. The road itself is not contained within the easement. It is outside the easement.

Chairman Scalzo added that they trespassed onto the park and damaged the park. There are records of that.

Mr. Kelhoffer agreed and added that one of the gentlemen was arrested. The County has made a counterclaim against these individuals for damage they have done. They don't expect to recoup a lot of money from them. He referred to the GIS map and pointed out a locked gate. They just drove around that gate, drove through the park, and destroyed a cactus and other plants in the process. That is part of the County's counterclaim.

Ms. Westerhausen asked how the existence of the easement affects their claim that they are going by way of private way of necessity.

Mr. Kelhoffer responded they should be able to understand that an assignment of the easement does not get them there. The easement is not relevant except that they are an owner. That is something that will be covered in depositions. A Motion to Dismiss was filed on behalf of the County regarding the private way of necessity action. The Motion to Dismiss was based on a Washington court case. They used the Washington case because there are no Arizona cases. Our private way of necessity statutes are based on Washington law. There are cases out there that say when there's not an Arizona case you look to Washington and we did. The Washington case said, in essence, that private ways of necessity are just that – across private property – not across government property. In other words, an individual cannot condemn government land. Only the government can condemn government land. They presented this to the court. The court, without having any argument on it and without having any discussion, denied the County's motion. At that point, the County filed an amended counterclaim because they realized that because of the state's Conservation Easement, the State is a necessary party to this action. The State will file their Answer on Monday. The parties are working through some scheduling issues with all sides as to when they will get depositions taken and when they will get their experts lined up. He will work with Ms. Hernbrode regarding the joint expert, who is an appraiser. If they are successful, which we certainly hope they're not, they will have to pay an amount to do this. It is private condemnation. We hope to find an individual who would certainly recognize the damage that would be done to this highly-sensitive environmental area by allowing public access through it. These parcels are large enough to be developed, which would absolutely destroy this part of the park.

Mr. Kelhoffer added that, in addition to the roads not being within the actual easement area, he has ridden on this road and there were times when all he could see was daylight. It is very rocky; barely transversable in a four-wheel-drive vehicle; and it's only 8' wide. It would absolutely require blading and paving for them to use it with any kind of development. The County has taken a very strong position that they do not want to see that happen and are glad that the State will be joining them in this effort to beat back their attempts.

Mr. Kelhoffer stated that he has been working with Kevin Costello, Maricopa County Attorneys Office, who is also present at this meeting. The property owners have been told that they need to find another way to access their property and the County believes there are other ways for them to do so through some of these other roads and that they do not need to go through the Spur Cross Ranch Conservation Area.

Ms. Westerhausen asked if that is where the definition of "necessity" comes into play.

Mr. Kelhoffer responded that that is part of the definition. The County is still hanging onto the belief that a private citizen does not have the ability to condemn government land. That will be their initial position. Their second position would be that there are other ways for them to go. Their fall-back position is that it will cost them a bundle.

Ms. Westerhausen asked who the judge was that denied the Motion.

Mr. Kelhoffer responded that he is no longer on the case.

Mr. Costello responded that it was Judge Gaines. Judge Reyes now has the case.

Mr. Woodling noted that there is a Conservation Easement on this land. He asked if this road was addressed at any time through an EDR.

Ms. Hernbrode responded that that easement was in place when the State, County, and City purchased Spur Cross. Therefore, the Conservation Easement cannot limit whatever rights were granted under that easement.

Mr. Woodling asked if that road was addressed in the original easement and if there's anything in the EDR that prevents that area from being developed.

Mr. Hernbrode responded that certainly the County is prohibited from widening that road.

Chairman Scalzo added that they went through an extensive two-year process of planning that included the County, the State, and the citizens of Cave Creek. Literally hundreds of meetings were held. It became very clear that there were jeep trails and rides through there. The overall opinion and decision was that NO road access would be permitted except for emergency or maintenance kinds of functions and that that road would never function as a road again for vehicles. When he was Director, the County determined that that road could not be used for any other purpose other than walking. They dealt with issues of disabled individuals, tours, and others. One can ride a horse on it; one can walk on it; but no one will drive a vehicle on that road. He believes the Board would be violating the Conservation Easement by allowing them to drive on it.

Mr. Landry stated that, with all due respect to the Chairman, he would like to be in Executive Session to discuss legal items. He appreciates the County's discussion, but we have a full Board here.

Mr. Landry made a motion to for the Board to enter Executive Session. Mr. Woodling seconded the Motion and it carried unanimously.

Chairman Scalzo called for a Recess at 10:53 a.m. in order for the Board to go into Executive Session. All persons not directly involved in the Executive Session were asked to leave the room.

The Board entered into Executive Session at 10:54 a.m.

Chairman Scalzo Reconvened the public session of the Board meeting at 11:38 a.m.

E. BOARD ACTION ITEMS

2. Suit Filed Against the State of Arizona, Arizona State Parks by Keith Vertes and Scott Mead regarding the Spur Cross Ranch Conservation Area.

Board Action

Mr. Landry: I move that the Board authorize its attorney to proceed as discussed in Executive Session.

Ms. Westerhausen seconded the Motion. The Motion carried with Chairman Scalzo Abstaining from the vote and Mr. Colton being absent from the room (4 Ayes; 1 Abstention).

1. Recruitment of an Executive Director

Ms. Westerhausen stated that she would like to know the pros and cons of using DOA vs. a headhunter, setting aside the issue of cost.

Ms. Laurence responded that she gave this some thought while they were sitting in the break room while the Board was in Executive Session. She noted that there are two kinds of search firms: retained search and contingency search. In a contingency search, they will source the candidate via cold calling. The Board would call them and they would call several people. Should the Board hire someone they referred to the Board, the Board would then pay that firm contingent upon hiring one of their referrals. In a retained search, the Board would pay the search firm whether they find someone for the Board or not.

Ms. Laurence reminded the Board that both she and Mr. Kernen worked for search firms. She was a Branch Manager and Mr. Kernen had his own business. They both have that experience.

Ms. Laurence stated that, as far as reference checking, if one is asked for his/her professional references, a search firm would ask for professional references, too. She cannot imagine that the Board would not want professional references. Confidentiality issues can arise no matter who is doing the search. It's just the nature of the beast.

Chairman Scalzo asked if DOA does financial and law enforcement checks on potential candidates. He feels it's very important to find whether they've had any financial issues. In this day and age, it is important to know if they are going through any foreclosures or pending lawsuits or any legal problems such as anything from driving under the influence to other things that may have some impact on the perception of the candidate.

Mr. Kernen responded that the Board needs to be very careful with that because the relevancy of that information to the position would need to be shown. DOA does perform criminal background checks on people who may have access to the HRIS system. As far as researching a person's credit history, that is just not done to the best of his knowledge, except perhaps for someone who has fiduciary responsibility – not just budget control.

Chairman Scalzo noted that the Board is involved in large purchases of land where the Executive Director represents the Board.

Mr. Kernen responded that he would think that the Board would need the AG's guidance on whether or not that's appropriate.

Chairman Scalzo noted that, for positions smaller than this, the County does it for important reasons because they are driving County vehicles; they represent the County in public meetings. Any kind of criminal background can surface four years down-the-road and be very embarrassing. They've lost some individuals because of those issues.

Ms. Laurence stated there was one other issue she wanted to raise regarding interview questions. DOA's interview questions have been developed and validated by all departments within the DOA. This is not so with search firms. There is some liability in what kinds of questions can be asked.

Ms. Laurence added that her department did the executive search for Early Childhood Development. They asked some very important questions, which is relative to the thing about budget and background checks. One of the questions they asked was if there was anything in their pasts or professional experiences that they believed the board would need to know.

Chairman Scalzo and Ms. Westerhausen thanked Ms. Laurence and Mr. Kern for staying through the Executive Session and meeting again with the Board.

Chairman Scalzo stated that at this point he wanted to appoint a committee that he will chair. He will appoint two other Board members to serve on the committee. He appointed Mr. Cordasco to the committee. He noted that Mr. Cordasco has served on the Board the longest, is a rancher, represents Northern Arizona, and is a person who he finds to be of high integrity and who asks the right kinds of questions. He stated that he would like to have one of the Board's newer members on the committee as well. Because of Mr. Landry's experience with the Sports Authority's recruitment efforts, he asked Mr. Landry to be the third member of the committee. Mr. Landry accepted the appointment.

F. CALL TO THE PUBLIC

No public remained who wished to address the Board.

Chairman Scalzo noted that the next Board meeting will be held September 19 at the Peoria Council Chambers in Peoria, AZ starting at 10:00 a.m. and will deal with awarding grants and other Agenda items.

G. ADJOURNMENT

Mr. Woodling made a Motion to adjourn the meeting; Ms. Westerhausen seconded the Motion and the Motion carried unanimously. Chairman Scalzo adjourned the meeting at 11:50 a.m.

Pursuant to Title II of the Americans with Disabilities Act (ADA), Arizona State Parks does not discriminate on the basis of a disability regarding admission to public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the acting ADA Coordinator, Karen Farias, (602) 364-0632; or TTY (602) 542-4174. Requests should be made as early as possible to allow time to arrange the accommodation.

APPROVED:

William Scalzo, Chairman

Arizona State Parks Board
Minutes
August 22, 2008

Reese Woodling, Vice Chairman